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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA, No. CR S-02-0213-MCE-CMK

12 Respondent,

13 vs. ORDER

14 MIGUEL HERNANDEZ-MUNGUIA,

15 Movant.
16 _____/


17 Movant, a federal prisoner proceeding pro se, brings this motion to correct or set
18 aside a criminal judgment pursuant to 28 U.S.C. § 2255. Pending before the court is movant's
19 request for a certificate of appealability (Doc. 408).

20 Movant has timely filed a notice of appeal of this court's denial of his motion
21 under 28 U.S.C. § 2255. Before movant can appeal this decision, a certificate of appealability
22 must issue under 28 U.S.C. § 2253(c). See Fed. R. App. P. 22(b); see also 28 U.S.C. § 2255. A
23 certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a
24 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court
25 must either issue a certificate of appealability indicating which issues satisfy the required
26 showing or must state the reasons why such a certificate should not issue. See Fed. R. App. P.

1 22(b). For the reasons set forth in the magistrate judge's December 28, 2008, findings and
2 recommendations, movant has not made a substantial showing of the denial of a constitutional
3 right.

4 Accordingly, IT IS HEREBY ORDERED that movant's request for a certificate of
5 appealability (Doc. 408) is denied.

6 Dated: November 5, 2010

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8 MORRISON C. ENGLAND, JR.
9 UNITED STATES DISTRICT JUDGE
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